

January 11, 2018

VIA FOIA online

Regional Freedom of Information Officer
U.S. EPA, Region 5
77 West Jackson Boulevard (MI-9J)
Chicago, IL 60604-3590

RE: Freedom of Information Act (“FOIA”) Request for communications between Wisconsin DNR and U.S. EPA

Dear FOIA Officer:

In accordance with 5 U.S.C. § 552, Midwest Environmental Advocates (“MEA”) requests a copy of all communications between the Wisconsin Department of Natural Resources (“DNR”) and the Environmental Protection Agency (“EPA”) regarding (i) the Petition for Corrective Action (“PCA”) filed by MEA on behalf of 16 citizen petitioners on October 20, 2015, and (ii) the resolution of the 75 points of deficiency identified in the July 18, 2011 letter from EPA Region 5 Administrator Susan Hedman to DNR Secretary Cathy Stepp. Copies of the PCA and the 2011 deficiency letter are attached hereto for reference. Please include in your response all records of communications occurring between October 1, 2015, and the date of this request.

MEA requests all records of such communications, including, but not limited to, emails, attachments, correspondence, letters, memoranda, telephone recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, and chats.

If the EPA invokes a FOIA exemption to deny all or part of this request, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger including:

1. Basic factual material about each withheld communication, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the communication (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld communication. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

I hereby request that the EPA waive the fees associated with this request. The purpose of FOIA’s fee waiver provision is precisely to facilitate access to agency records by citizens groups such as MEA; indeed, Congress has recognized the importance of FOIA to the ongoing missions of public interest organizations who seek to ensure the proper function of government. See Better Gov’t Ass’n v. Dep’t of State, 780 F.2d 86, 88-89 (D.C. Cir. 1986).

The EPA typically looks to six (6) factors to determine whether the disclosure of the information is likely to contribute to public understanding of the operations and activities of the government; see 40 C.F.R. § 2.107(l). Each factor is discussed below.

A. *The subject of the request concerns identifiable operations and activities of the federal government.*

The subject of this request concerns the EPA's role in overseeing the implementation of and ensuring compliance with the federal Clean Water Act ("CWA"). The EPA, as the primary entity charged with the implementation and enforcement of the CWA, must ensure that agencies in states, like Wisconsin, that have delegated National Pollutant Discharge Elimination System permitting programs operate in accordance with federal law. It is the performance of this oversight function by the EPA, and the partnership between DNR's issuance of permits and the EPA's authority to correct noncompliance, that is the subject of this request.

B. *The requested records are meaningfully informative of government operations.*

The requested records contain information detailing the EPA's crucial oversight of the Wisconsin Pollutant Discharge Elimination System ("WPDES") program. Even though DNR operates the delegated WPDES program, the EPA plays an important oversight and enforcement role. Understanding the extent to which the EPA provides guidance to Wisconsin's water pollution regulators, and the content of the EPA's legal and technical review of specific operations that may be in violation of the CWA, is essential to the public.

The EPA has a variety of mandatory and discretionary duties with regard to Wisconsin's implementation of the WPDES program. Most importantly, the EPA must ensure that the program is meeting the fundamental requirements of the CWA. Release of the communications requested herein will shed light on the EPA's exercise of authority over Wisconsin's WPDES program.

C. *Disclosure of the requested records will contribute to the understanding of the public at large.*

The disclosure of the requested communications will further the understanding of the public at large because the requestor has the intent, expertise, and means to distill and disseminate the requested information to the public.

MEA is an organization that has considerable expertise in the CWA and water pollution issues generally. Along with several partner organizations, citizens and the 16 citizen petitioners, MEA has identified water pollution discharges as an area of concern, and MEA is committed to strengthening environmental controls and furthering enforcement of existing law governing these kinds of discharges. MEA has worked collaboratively in

the past to educate the public of the environmental impacts of the WPDES program, and the need for greater enforcement of applicable state and federal CWA requirements.

Additionally, MEA has the legal, policy, and technical experts on staff, with broad experience in the CWA and its implementation, who will distill the contents of the communications and provide that information to the public at large. MEA maintains a list of activists, concerned citizens, donors, and members who are themselves interested in learning more about water pollution issues. The information gleaned from the requested records, once analyzed, will be disseminated to these individuals and organizations.

D. The contribution to public understanding will be “significant” and the level of public understanding will increase as a result of disclosure.

There has been significant interest in EPA’s review of the WPDES program among both the media and the general public since EPA’s 2011 letter to DNR. Over the last two (2) years, there has been a lot of movement in EPA’s investigation. DNR has submitted numerous rules and other documentation to EPA for review. EPA has determined that many of the outstanding issues under investigation are now resolved and in some cases, EPA appears to have taken different positions with regards to how DNR must resolve specific issues during the course of its investigation. The requested records will shed significant light on the basis for EPA’s decision making related to the investigation of the concerns raised in the 2011 letter and the PCA.

E. Disclosure of the information is not primarily in the commercial interest of the requester.

As a non-profit organization, MEA does not have any commercial interest in the communications requested herein. We have a public interest mission to ensure clean water, air, land, and government for this generation and the next.

F. The ability of the requester to disseminate the information.

MEA has a page on its website to post responses to record requests such as this FOIA request to the EPA. That information will be available to the public through the Google search function on our website. See <http://midwestadvocates.org/foia>.

We also regularly blog and send out email alerts to inform the public about opportunities for public comment. In these blogs and email alerts, we link to other information and resources on our website such as the information that will be provided on our Open Government page. See <http://midwestadvocates.org/news-events/news/meteor-timber-wetlands-destruction-proposal-up-for-public-comment/>.

Please contact me at 608-251-5047, extension 2, if you need to discuss any aspect of my request. I anticipate receiving your response to my request within twenty days, as required under 5 U.S.C. § 552(a)(6)(A).

Thank you for your consideration of this request.

Sincerely,

/s/

Ry Carpenter
Community Services Coordinator
Midwest Environmental Advocates, Inc.